

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

MACMA MP No.1349 OF 2011

IN/AND

MACMA No.2624 OF 2015

ORDER:

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This appeal is filed challenging the order dated 30.07.2009 in O.P.No.640 of 2006 on the file of Motor Accidents Claims Tribunal-cum-I Additional District & Sessions Judge, West Godavari District, Eluru.

2. MACMA.M.P.No.1349 of 2011 is filed under Section 5 of the Limitation Act, 1963 to condone the delay of (9) days in filing the appeal.
3. Heard and perused the material on record.
4. Though respondents 2 and 3 being driver and owner of indica car bearing No.AP 05 6279 remained exparte before the tribunal and not necessary parties to the appeal and of any impact on the maintainability of appeal vide **Meka Chakra Rao vs Yelubandi Babu Rao @ Reddemma**.
5. It is at the request of both the parties, while allowing the delay condonation application and directing the Registry to number the appeal if other wise in order, taken up the appeal for final hearing.
6. The claim petition was filed by the claimant under Section 163 of the Motor Vehicles Act for compensation of Rs.1,67,900/- for the injuries sustained by him and the tribunal awarded compensation of Rs.72,000/- with interest at 7.5% p.a. vide its award dated 30.07.2009 by fixing joint and several liability against respondents.
7. The main contention in the grounds of appeal is that the compensation awarded by the tribunal is unsustainable much less by fixing joint liability, for driver even not having valid driving license, as accident was on 20.09.2005 of the light motor vehicle transport that was expired for want of

renewal by 09.04.2005 and renewed only on 24.10.2005 and merely because it was in force from 10.04.2002 and later from 24.10.2005 to 23.10.2008 taken up presumed of valid license as on the date of accident dated 20.09.2005. It is there from sought for exoneration of insurer. The tribunal, however, fixed joint liability by referring to it from the evidence of RWs.1 to 3, the employee of insurer and the R.T.A. employee concerned with reference to Ex.A3, charge sheet, Ex.A4, M.V.I.Report, Ex.B2, attested copy of driving license of the 1st respondent and Ex.X1 showing the license was not in subsistence as on the date of accident since transport license expired about one and half month prior to that though required to be renewed within thirty days grace period as per the first proviso of sub-section(1) of Section 15 of the Motor Vehicles Act, though otherwise got light motor vehicle non-transport as on the date of accident.

8. Having regard to the above, it is a fit case for pay and recovery vide ***Insurance Company Limited Vs. Swaran Singh & Others, S.Iyyappan Vs. United India Insurance Company*** and ***Kusum Lata ..vs. Satbir***. The tribunal instead of ordering pay and recovery, fixed joint liability, thereby to that extent, the appeal is to be allowed from joint liability to the extent of pay and recovery.
9. Accordingly and in the result, while allowing the appeal in part with joint and several liability of the insurer and insured, to pay by the insurer to the claimants and then to recover from the insured. The insurer shall deposit said amount within one month, failing which the claimant can execute and recover. It is made clear from the settled expressions of the Apex Court in ***United India Insurance Co. Ltd. V. Lehu & Nanjappan*** that the insurer is entitled, while depositing the amounts payable, if not deposited or paid any amounts so far to deposit the balance amount to approach the tribunal to direct the RTA concerned not to register any transfer of the crime vehicle and to seek for attachment of the crime vehicle or other property of the insured as an assurance for execution and recovery in the same proceedings or under revenue recovery as per the MV Act, 1988 and also ask the Tribunal not to disburse the deposited amount of the respective

claimants (but for to invest in a bank) till such attachment order is made. However, after the same, the Tribunal shall not withhold the amounts of the claimant, if there is any necessity to permit for any withdrawals but for to invest the respective balance amounts separately in fixed deposits in a nationalized bank. Rest of the terms of the award of the Tribunal holds good. There is no order as to costs.

10. Miscellaneous petitions, pending if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:12-11-2015

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